

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

BRENDA ELLIOTT)	
Claimant)	
VS.)	
)	Docket No. 214,430
SYMBIOS LOGIC)	
Respondent)	
AND)	
)	
INSURANCE COMPANY OF STATE OF PENNSYLVANIA)	
Insurance Carrier)	

ORDER

Claimant and respondent appeal from the December 19, 1997, Award of Administrative Law Judge John D. Clark. Oral Argument was heard on July 15, 1998.

APPEARANCES

Claimant appeared by her attorney, Robert R. Lee of Wichita, Kansas. Respondent and its insurance carrier appeared by their attorney, Kim R. Martens of Wichita, Kansas. There were no other appearances.

RECORD AND STIPULATIONS

The record and stipulations as specifically set forth in the Award of the Administrative Law Judge are herein adopted by the Appeals Board.

The parties acknowledge that the Order of Director Philip S. Harness dated May 28, 1998, appointing Bryce A. Abbott of Wichita, Kansas, as Workers Compensation Appeals Board Member Pro Tem, has been rescinded and vacated effective July 13, 1998.

ISSUES

Claimant raises the following issue for Appeals Board consideration:

What is the nature and extent of claimant's injury and/or disability?

Respondent raises the following issues for Appeals Board consideration:

- (1) Did claimant suffer accidental injury on the date or dates alleged?
- (2) Did claimant's accidental injury arise out of and in the course of her employment with respondent?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Findings of Fact

This matter is before the Appeals Board a second time. It was originally presented to the Appeals Board on an appeal from a preliminary hearing Order of Judge Clark dated October 9, 1996. In its Order of January 28, 1997, the Appeals Board reversed the Administrative Law Judge's award of benefits and found claimant had not proven accidental injury arising out of and in the course of employment. Since that decision, numerous depositions have been taken of both medical experts and respondent representatives. Based upon the additional evidence, the Appeals Board is being asked to reconsider whether claimant's accidental injury arose out of and in the course of her employment with respondent.

Claimant began working for respondent in the fall of 1994. In November 1995, she went on pregnancy leave during which time she developed carpal tunnel syndrome. At various times in claimant's testimony, she discusses right upper extremity carpal tunnel syndrome and at other times she discusses bilateral carpal tunnel syndrome associated with her pregnancy. Claimant returned to her employment with respondent on April 29, 1996. She was referred to Dr. David R. Durand, an osteopath, on April 29, 1996, for a fitness for duty exam. She was cleared for work and returned to her employment as a production specialist working on the line. She almost immediately reported pain in her right wrist. She was referred back to Dr. Durand for nerve conduction studies which were performed on May 8, 1996, showing a right median neuropathy, indicating right carpal tunnel syndrome, moderate to severe. As a result of her complaints, claimant was transferred to a light duty job in the library which she acknowledged was a much easier job and gave her no physical difficulties.

On June 13, 1996, while working in the library, claimant was referred to Dr. J. Mark Melhorn, an orthopedic surgeon. Dr. Melhorn examined claimant on two separate occasions, diagnosing carpal tunnel syndrome on the right side. Dr. Melhorn believed claimant's continued right side symptomatology was a natural and probable consequence of the preexisting condition related to her pregnancy, but went on to state that her work

activities probably contributed to the symptoms on the right. Dr. Melhorn acknowledged claimant had had some left upper extremity symptomatology during her pregnancy but from his records could find no indication that claimant complained of pain in her left upper extremity as a result of her work activities after returning to work April 29, 1996. Any limitations he would have placed on claimant's left upper extremity would be based upon a history of left carpal tunnel syndrome, not upon any complaints she voiced to him.

On June 28, 1996, claimant was assigned back to line 6256, line work that had been cleared with her then treating physician.

Claimant was examined by Dr. Pedro A. Murati, a board certified physical medicine and rehabilitation specialist, at the request of claimant's attorney on August 22, 1996. She gave Dr. Murati a history of right upper extremity symptomatology in January 1996 while she was pregnant with no indications of difficulties in her left hand. She did later develop symptoms in the left hand. At the time of Dr. Murati's examination, claimant was complaining of pain in the right wrist with no numbness or tingling. Dr. Murati recommended another EMG and a nerve conduction study to assess claimant's carpal tunnel condition, but neither was performed after his examination. The only nerve conduction studies performed were those by Dr. Durand on May 8, 1996, showing right upper extremity neuropathy. Dr. Murati also opined that claimant's left upper extremity symptomatology preexisted her April 29, 1996, return to work.

Respondent deposed Valeria Dea Morrissey, manager of subsystems, assembly and testing at respondent's plant. She was the supervisor over production assembly and fabrication, and did have occasion to supervise claimant. She testified she had almost daily contact with claimant between her April 29, 1996, return to work and her last day of employment on July 9, 1996. After claimant's return from pregnancy leave, Ms. Morrissey testified that claimant was on light duty work almost continuously and at no time during this period did claimant complain to her regarding any left wrist symptomatology. There was ample opportunity for claimant to voice any such concerns as there was daily contact between Ms. Morrissey and claimant during this period of time.

Ms. Morrissey acknowledges a dispute arose on or about July 9, 1996, regarding how claimant would perform a certain grommet-cutting job. The dispute arose over whether claimant should use electric cutters or manual hand cutters. There is disagreement regarding the substance of this dispute. However, there is no disagreement as to the fact it led to claimant's termination with the respondent, whether voluntary or otherwise.

Ms. Morrissey acknowledges claimant had complaints in her right wrist on July 1, 1996, while working on line 6256. It was shortly after that she was referred to Dr. Melhorn. Claimant was off work until July 8, 1996, for the Fourth of July holiday, and when she returned to work she was placed on line 6299. This new job elicited no complaints of pain.

On July 9, 1996, the incident with the scissors occurred, resulting in claimant's termination of employment with respondent.

Ms. Morrissey testified that respondent's policy was to avoid giving claimant any type of task which would cause her pain. They would discuss any job assignments before placing claimant on a job to insure that the production work fell within claimant's restrictions.

Also deposed was Pamela Crocker, a registered nurse employed as an environmental health and safety specialist for respondent. She acknowledged the nerve conduction studies performed by Dr. Durand on May 8, 1996, indicated right upper extremity carpal tunnel symptomatology. However, she echoed Dr. Durand's opinion that claimant's return to the line for a day and a half was not sufficient to relate her carpal tunnel syndrome condition to her work. When claimant was referred to Dr. Phillips, her primary care physician, and returned to work without restrictions, respondent did not feel comfortable with this return to work. Claimant was then referred to Dr. Melhorn, who did place restrictions on claimant. Respondent then placed claimant in the library pursuant to Dr. Melhorn's restrictions.

Claimant's return to the line on job 6256 was also within her restrictions. The company would have continued to accommodate claimant's restrictions had the dispute over the scissors not led to claimant's termination.

Conclusions of Law

In proceedings under the Workers Compensation Act, the burden of proof is on claimant to prove her entitlement to benefits and to establish the claimant's right to award of compensation by proving the various conditions upon which claimant's right depends by a preponderance of the credible evidence. See K.S.A. 1996 Supp. 44-501 and K.S.A. 1996 Supp. 44-508(g).

It is the function of the trier of facts to decide which testimony is more accurate and credible, and to adjust the medical testimony along with the testimony of claimant and any other testimony which may be relevant to the question of disability. The trier of facts is not bound by medical evidence presented in the case and has a responsibility to make its own determination. Tovar v. IBP, Inc., 15 Kan. App. 2d 782, 817 P.2d 212, *rev. denied* 249 Kan. 778 (1991).

The evidence confirms claimant suffered bilateral carpal tunnel syndrome while on pregnancy leave from respondent. While her symptoms did not totally disappear, they did improve substantially when she returned to work. It is significant that Dr. Durand's nerve conduction test of May 8, 1996, showed right carpal tunnel neuropathy. It is also significant that claimant has consistently displayed right upper extremity symptoms both to

respondent and to her medical examining physicians during most of her history of employment with respondent and after her return to work April 29, 1996.

However, also significant is the lack of symptoms and lack of complaints to claimant's left upper extremity. She was examined and treated by Dr. Durand while employed with respondent, voicing only right upper extremity complaints. She was examined and treated by Dr. Melhorn during the course of her employment with respondent, again displaying only right upper extremity complaints. Her complaints to respondent's representatives, including claimant's immediate supervisor, Ms. Morrissey, were to the right upper extremity with no complaints to the left upper extremity. While she had preexisting symptoms and complaints to the left upper extremity during her pregnancy, it does not appear as though claimant's work activities aggravated her left upper extremity during the period April 29, 1996, through July 9, 1996. The complaints to Dr. Murati regarding the left upper extremity did not occur until August 22, 1996, over six weeks after the claimant's termination of employment with respondent.

In reviewing the evidence, the Appeals Board finds claimant has proven accidental injury arising out of and in the course of her employment to her right upper extremity resulting in the carpal tunnel condition diagnosed by Dr. Durand and confirmed by both Dr. Melhorn and Dr. Murati. The Appeals Board finds, however, claimant has failed to prove an aggravation of her carpal tunnel syndrome on the left side during her employment with respondent.

The Appeals Board finds claimant suffered a work-related injury to her right upper extremity only and, pursuant to K.S.A. 1996 Supp. 44-510d, is entitled to compensation for a scheduled injury. In reviewing the medical evidence, the Appeals Board finds the only functional impairment rating assessed to claimant's right upper extremity is Dr. Murati's 5 percent impairment. The Appeals Board finds that claimant is entitled to a 5 percent permanent partial disability to her right upper extremity and, therefore, affirms the Award of the Administrative Law Judge.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Award of Administrative Law Judge John D. Clark dated December 19, 1997, should be, and is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of August 1998.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Robert R. Lee, Wichita, KS
Kim R. Martens, Wichita, KS
John D. Clark, Administrative Law Judge
Philip S. Harness, Director